

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:UNY:TL-N-5888-99
RMBoulanger

date:

to: [REDACTED], CEP Case Manager, Group [REDACTED]

from: District Counsel, Buffalo

subject: [REDACTED] / Statute Extension

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Collection recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Collection, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

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ISSUE

This memorandum is in response to your September 13, 1999 request for advice concerning statute extensions for the [REDACTED] tax year. Specifically, whether a Form 872 or Form 872-F should be used.

^{1/}A copy of this opinion is being sent to the National Office for Post-review and any guidance they may deem appropriate. We will inform you of any modification or suggestions, and if necessary we will send you a supplemental memorandum incorporating any such recommendation.

You have received an examination report generated from an examination of the [REDACTED] ([REDACTED]) partnership. Your taxpayer, [REDACTED], holds a [REDACTED]% interest in this partnership for [REDACTED]. A summary of the pertinent facts pertaining to this examination is attached to this memorandum as Exhibit I. The TEFRA package itself is attached as Exhibit II.

You have previously extended the statute for [REDACTED] as the result of an Administrative Adjustment Request (AAR) submitted by [REDACTED] for a similar issue. In order to protect that statute, our office approved supplemental language which we inserted into the Form 872 secured for that year. A copy of that statute extension is attached as Exhibit III.

The [REDACTED] TEFRA adjustment is the result of an examination and thus the statute is different from the statute addressed in your previous submission to this office regarding the [REDACTED] year. The [REDACTED] statute is open under both I.R.C. §§ 6229 and 6501.

You are requesting our opinion as to whether the [REDACTED] statute under I.R.C. § 6229(f) should be extended using Form 872-F or if supplemental language can be inserted into the Form 872 used to protect the [REDACTED] statute under I.R.C. § 6501. You have already extended the statute for the [REDACTED] - 1120 to [REDACTED]. A copy of that form 872 is included as Exhibit IV. Since the one year date is due to expire on [REDACTED], you need a prompt response to this request.

DISCUSSION

The period of limitations for assessing tax to the partners from a change in the treatment of a partnership item is generally controlled at the partnership level. Pursuant to I.R.C. § 6229(a), the period for assessing any tax imposed by Subtitle A attributable to partnership affected items shall not expire before 3 years after the later of the date the partnership return was filed or the last day for filing such a return. Section 6229(b) specifically allows the Service and the taxpayer to extend the statute of limitations at both the partnership and the individual partner levels.

Section 6229(f) applies to individual partners whose TEFRA items are excepted out of the TEFRA proceedings. This occurs when partnership items become nonpartnership items by reason of one of the occurrences specified in I.R.C. § 6231(b). Once excepted out, the one-year period for assessing those nonpartnership items begins to run. Section 6229(f) specifically allows extension of such one-year period by agreement between the parties.

Under the facts presented, I.R.C. § 6229(f) applies to this case because the partnership involved was not only excepted out of the TEFRA provisions by the occurrence of a I.R.C. § 6231(b) event, but also the statute expires on [REDACTED].

We have also informally discussed this issue with Don Glover, TEFRA Coordinator, QMS, Upstate New York District. Based upon our discussions, it was agreed that given the fact that the I.R.C. § 6229 limitation is still open, the procedures thereunder should be utilized.

Although it is the position of the National Office that I.R.C. § 6501 is the controlling limitation on assessment (T.L. No. 81, LGM Sept. 25, 1998 Rev.), I.R.C. § 6501 should only be utilized when it is the only basis for extension.

Therefore, it is our opinion that the [REDACTED] statute of limitations under I.R.C. § 6229(f) should be extended using Form 872-F. In employing Form 872-F, it is paramount to remain alert to the fact that such form only extends adjustments pertaining to the partnership; it has no benefits as to other tax matters appearing on the parent corporation's Form 1120.

If you have any questions regarding the above, please contact Raymond Boulanger of this office at 551-5610.

EDWARD D. FICKESS
Acting District Counsel